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10/064,659	08/05/2002	James Clifton Potter	200-1165	5314

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EXAMINER

RESTIFO, JEFFREY J

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 04/20/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/064,659
Filing Date: August 05, 2002
Appellant(s): POTTER, JAMES CLIFTON

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Marc F. Malooly
Reg. No. 50,624
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 2/7/2005.

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(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(7) Prior Art of Record

US 6,366,848 B1	GUSTAVSSON	02-2002
US 5,992,553 A	MORRISON	11-1999
US 6,540,035 B2	NAGANO et al.	04-2003

(8) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 9-16 are rejected under 35 U.S.C. 102(e) as being anticipated by Gustavsson (US 6,366,848 B1).

Gustavsson discloses a vehicle including an apparatus 10 for displaying a maximum sustainable speed of said vehicle, said apparatus including a controller 20, which receives signals and calculates said speed and indicates it on a display portion 18, a pulse wheel sensor 43 for measuring velocity and acceleration, and wherein said apparatus will display a second "standard" maximum speed if the newly measured speed differs by a predetermined amount when the vehicle velocity is zero, as shown in figures 1-3C, and recited in column 1, line 49 through column 2, line 8.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gustavsson (US 6,366,848 B1) and in further view of Nagano et al. (US 6,540,035 B2).

With respect to claims 1-3, Gustavsson discloses a vehicle including an apparatus 10 for displaying a maximum sustainable speed of said vehicle, said

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apparatus including a controller 20, which receives signals and calculates said speed and indicates it on a display portion 18, a pulse wheel sensor 43 for measuring acceleration, and wherein said apparatus will display a second maximum speed if the newly measured speed differs by a predetermined amount, as shown in figures 1-3C, and recited in column 1, lines 49-57. Gustavsson does not disclose the apparatus as being used with a hybrid vehicle. Nagano et al. does disclose a hybrid vehicle with controller 18, as shown in figure 2. It would have been obvious to one having ordinary skill in the art at the time of the invention to have applied the speed measuring apparatus of Gustavsson to the hybrid vehicle of Nagano et al. in order to allow an operator to be informed of an optimal or maximum attainable speed for determination of fuel economy and/or battery life.

5. Claims 4-8 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gustavsson as modified by Nagano et al., as applied to claims 1 and 14 respectively above, and further in view of Morrison (US 5,992,553 A).

With respect to claims 4-8, neither Gustavsson nor Nagano et al. disclose the speed calculations as taking into account slope, friction, drag, and inertia measurements. Morrison does disclose a speed calculating device 46 that takes into account rolling friction of the tires 22, aerodynamic drag, inclination or slope, and inertial force which depends upon the weight of the rider, as recited in col. 1, lines 50-55. It would have been obvious to one having ordinary skill in the art at the time of the invention to have the speed sensing apparatus of Gustavsson as modified by Nagano et

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al. to take into account the parameters of slope, drag, friction, and inertia, as taught by Morrison, in order to achieve a more precise speed measurement of the vehicle.

With respect to claims 17-20, the method recited in these claims is inherently performed in the use of the speed sensing apparatus of Gustavsson as modified by Nagano et al. and Morrison, described above.

(9) *Response to Argument*

With respect to the appellant's arguments concerning claims 9, 10, 12-16, and 18-20, the appellant's attempt to differentiate between the terms "sustainable" and "attainable" is not persuasive because any speed that is "attainable" is also "sustainable", at least for a small period of time, and claim 9 makes no attempt to define the duration of time the speed must be maintained. Further, the appellant attempts to explain how a "maximum sustainable speed" may be exceeded where a "maximum attainable speed" may not. The examiner takes the position that a "maximum" is a "maximum", not an optimal, and that a maximum can't be exceeded or it would not be considered a maximum.

With respect to the appellant's arguments concerning claim 11, Morrison recites the use of an "on pedal pulse generator" which is equivalent to a "pulse wheel" in column 11, lines 55-67.

With respect to the appellant's arguments concerning claims 1-3 and 5-8, Nagano et al. was only applied as an example of a hybrid vehicle with engine control capabilities, any conventional hybrid vehicle can benefit from the use of the controller as taught by Gustavsson.

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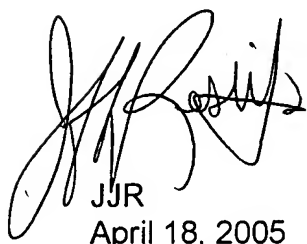
With respect to the appellant's arguments concerning claims 4 and 17, the parameters recited in these claims are conventional parameters that are used in engine controllers. Morrison is a single example, however there are many that show the use of these parameters for controlling vehicle engine modes, especially in hybrid vehicles.

In conclusion, the appellant makes no attempt to recite how the controller applies the parameters to the determination of the "maximum sustainable speed" in independent claims 1, 9, and 14, and therefore the controller of Gustavsson reads on the claims due to the extreme broadness of the claims.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Jeffrey J. Restifo
Examiner
Art Unit 3618



JJR
April 18, 2005

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